

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed June 5, 2007 (“Office Action”). Claims 1-43 are pending in the present application. Claims 25-43 are withdrawn from consideration and Claims 1-24 stand rejected.

**Section 103 Rejections**

Claims 1-7 and 9 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,758,344 to Wildenauer (“*Wildenauer*”) in view of U.S. Patent No. 4,521,517 to Gauthier (“*Gauthier*”) and U.S. Patent No. 4,230,676 to Taylor, et al. (“*Taylor*”). Applicants respectfully traverse this rejection.

Independent Claim 1 is allowable because the combination of *Wildenauer*, *Gauthier*, and *Taylor* fail to disclose, teach, or suggest “a drain pipe disposed within the gravel layer.” The Office Action conceded that *Wildenauer* does not disclose this feature. *See* Office Action, page 3. Accordingly, the Office Action pointed to *Gauthier*’s branch pipe 27 as an alleged disclosure of this feature. However, this is incorrect. *Gauthier*’s branch pipe 27 is an aeration pipe – not a drain pipe. That is, as described with reference to Column 3, lines 22-31 of *Gauthier*, ambient air is forced through the compost pile using the branch pipe 27. Accordingly, *Gauthier*’s aeration branch pipe 27 could not disclose a drain pipe disposed with the gravel layer. Applicants additionally note that *Taylor* contains no disclosure of a drain pipe disposed with a gravel layer. For at least these reasons, Applicants submit that Independent Claim 1 and its dependents should be allowed. Independent Claim 12 and its dependents should be allowed for analogous reasons.

Independent Claim 1 is additionally allowable over the proposed combination of *Wildenauer*, *Gauthier*, and *Taylor* because the proposed combination would render *Wildenauer* “unsatisfactory for its intended purpose.”<sup>1</sup> Clearly, one would not be motivated to combine references in a manner that would make the references unsatisfactory for their intended purpose. Accordingly, there is no suggestion or motivation to make the proposed combination.

In setting forth this rejection, the Office Action asserts that it would have been obvious to combine *Taylor*’s lime slurry input device with *Wildenauer*. However, this proposed combination would render inoperable *Wildenauer*’s ability to remove liquid flow-

---

<sup>1</sup> *See* MPEP 2143.01 (“If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.” citing *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)).

off 11 from trough 21. Specifically, *Taylor* describes a conduit, which serves a two-fold purpose: (1) as an evacuator to withdraw fluid, and (2) as an injector to inject fluid to the pile. With reference to FIGURE 2, *Taylor's* conduits moves vertically with the pile. The vertical offset of the *Taylor's* conduit would render inoperable *Wildenauer's* ability to remove liquid flow-off 11. That is, for example, with the *Taylor's* conduit in a vertical position, liquid flow off from the pile could not be captured as *Wildenauer's* system is designed to do.<sup>2</sup> Additionally, it is unclear how the use of *Taylor's* conduit with this two-fold purpose could be combined with any reference in which there is alleged disclosure of a “drain pipe disposed with the gravel layer.” That is, *Taylor's* drain pipe, the conduit, is always vertically offset with the pile and could not be disposed within a gravel layer. For at least this additional reason, Applicants submit that Independent Claim 1 and its dependents should be allowed. Independent Claim 12 and its dependents should be allowed for analogous reasons.

Independent Claims 1 is additionally allowable over *Wildenauer*, *Gauthier*, and *Taylor* because the PTO has improperly picked features from the references to the exclusion of the teachings of remainder of such references. To this end, Applicants respectfully remind the PTO that in making a determination of obviousness, “the prior art as a whole must be considered. The teachings are to be viewed as they would have been viewed by one of ordinary skill.” *In re Hedges*, 783 F.2d 1038, 1041, 228 USPQ 685, 687 (Fed. Cir. 1986) (emphasis added). “It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.” *Id.*

In the Examiner’s “picking” of features from three references, Applicants point out that each of the systems in each of the references are specifically designed for a particular purpose. For example, *Wildenauer* is directed towards a system with components that allow an aerobic action in one chamber and anaerobic reaction in another chamber. *See Wildenauer* abstract. *Gauthier* is directed towards a system with components that provide aeration to a compost pile. *See Gauthier* abstract. *Taylor* is directed towards a system, which has a dual purpose conduit (evacuator and injector) that vertically moves with a compost pile. *See Taylor* abstract and *Taylor's* figures. Applicants submit that features of these three systems do not lend themselves in an obvious manner to being individually “picked” out for

---

<sup>2</sup> In the alternative, if the Examiner argues that he is only borrowing a portion of *Taylor's* disclosure (namely, only the injector feature and not the extractor feature), Applicants would direct the Examiner to the arguments below concerning an impermissible “picking” of features from references.

recombination without the Applicants' disclosure in hand. Such is evident, for example, as described above with reference to difficulties in combining features of *Wildenauer, Gauthier, and Taylor*. For at least this additional reason, Applicants submit that Independent Claim 1 and its dependents should be allowed. Independent Claim 12 and its dependents should be allowed for analogous reasons.

Other section 103 were additionally set forth. These rejections are moot because independent Claims 1 and 12 should be allowable as identified above.

### **Double Patenting Rejection**

The Office Action set forth a provisional double patenting rejection over co-pending Application No. 10/701,409, which has a common specification and filing date with the present application. Applicants elected the same set of claims in the '409 application as the present application. Accordingly, on the same date as the filing of this response, Applicants are filing a divisional application off of the '409 application along with a preliminary amendment, canceling claims 1-24 (the claims being pursued in the present application). With a lapse of the claims 1-24 in the '409 application, Applicants request removal of the current provisional double-patenting rejection.

### **Request for Evidentiary Support**

Should a rejection based on any of the above asserted rejections be maintained, Applicants respectfully request appropriate evidentiary support. Additionally, if the Examiner is relying upon "common knowledge" or "well known" principles to establish the rejection, Applicants request that a reference be provided in support of this position pursuant to M.P.E.P. § 2144.03. Furthermore, to the extent that the Examiner maintains any rejection based on an "Official Notice" or other information within the Examiner's personal knowledge, Applicants respectfully request that the Examiner cite a reference as documentary evidence in support of this position or provide an affidavit in accordance with M.P.E.P. § 2144.03 and 37 C.F.R. 1.104(d)(2).

### **No Waiver**

All of Applicants' arguments are without prejudice or disclaimer. Applicants reserve the right to discuss the distinctions between the applied art and the claims in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner,

Applicants do not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicants are sufficient to overcome the rejections.

**CONCLUSION**

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Ryan S. Loveless, Attorney for Applicant, at the Examiner's convenience at (214) 953-6913.

Although no fees are believed due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,  
BAKER BOTTS L.L.P.  
Attorneys for Applicant

*Ryan S. Loveless*  
\_\_\_\_\_  
Ryan S. Loveless  
Reg. No. 51,970

Date: September 5, 2007

Correspondence Address:

at Customer No. **05073**